MD HALIM KADRI

v.

PP

HIGH COURT MALAYA, MUAR
JEFFREY TAN J
[CRIMINAL APPEAL NO: 42-20-2002
30 JANUARY 2004

CRIMINAL PROCEDURE: *Appeal - Sentence, against - Whether sentence manifestly excessive or unsuitable to the proved facts and circumstances*

CRIMINAL PROCEDURE: *Sentence - Assessment - Possession of pistol and ammunition - Proper sentence*

The appellant pleaded guilty to two offences under the Firearms (Increased Penalties) Act 1971. For the first offence of possessing a pistol, he was sentenced to seven years' imprisonment and six strokes of whipping. In respect of the second offence of possessing ammunition, he was sentenced to three and a half years' imprisonment. He appealed against the sentences.

Held (dismissing the appeal):

[1] The trial court had not imposed any sentence that was manifestly excessive or unsuitable to the proved facts and circumstances. Unlawful possession of a firearm and/or ammunition is a most serious offence. The public must be protected. Like-minded offenders must be deterred. The trial court had not applied any wrong principle in the assessment of the sentences. (p 443 b)

Case(s) referred to:
Ang Chai Seng v. PP [2000] 1 CLJ 213 CA ***(refd)***
Bhandulananda Jayatilake v. PP [1982] 1 MLJ 83 FC ***(refd)***
Dato' Seri Anwar Ibrahim [2002] 3 CLJ 457 FC ***(refd)***
PP v. Loo Choon Fatt [1976] 2 MLJ 256 HC ***(refd)***
R v. Kenneth John Ball 35 Cr App R 164 ***(refd)***

Appellant in person
For the respondent - Haslinda Abu Bakar; AG's Chambers

Reported by Andrew Christopher Simon

JUDGMENT

Jeffrey Tan J:

The appellant pleaded guilty in the court below to the following offences:

> Bahawa kamu bersama-sama, pada 6.1.2002 jam lebih kurang 5.50 p.m. di belakang rumah No. PHS 26, Jalan Parit Jorak Senawi, Tongkang Pechah, di dalam daerah Batu Pahat, di dalam Negeri Johor telah memiliki sepucuk pistol jenama SIG Sauer P230SL No. Siri S 012556 dengan menyalahi undang-undang, oleh yang demikian itu kamu bersama-sama telah melakukan satu kesalahan yang boleh dihukum di bawah Seksyen 8 Akta Senjatapi (Penalti Lebih Berat) 1971 dan dibacaan bersama di bawah Seksyen 34 Kanun Keseksaan.
>
> Bahawa kamu bersama-sama, pada 6.1.2002 jam lebih kurang 5.50 p.m. di belakang rumah No. PHS 26, Jalan Parit Jorak Senawi, Tongkang Pechah, di dalam daerah Batu Pahat, di dalam Negeri Johor telah memiliki 25 butir peluru hidup 9MM tanpa lesen yang sah, oleh yang demikian itu kamu bersama-sama telah melakukan satu kesalahan yang boleh dihukum di bawah Seksyen 8(a) Akta Senjatapi 1960 dan dibacaan bersama di bawah Seksyen 34 Kanun Keseksaan.

This is the appellant's appeal against the sentences, imposed and ordered by the Batu Pahat Sessions Court to run concurrently, of seven years imprisonment and 6 strokes of the rotan in respect of the 1st offence, and 3 and a 1/2 years imprisonment in respect of the 2nd offence.

It is discerned that those sentences of the trial court are well within the permitted range of sentences. All the same, an appellate court may disturb those sentences. "... the appellate court is ready to interfere with the sentence imposed by the trial court upon proof of one or more of the following circumstances: (a) The sentence imposed by the trial court was manifestly excessive or inadequate. (b) There is a manifest error either in law or in considering the facts and circumstances of the case, (c) The sentence passed by the trial court is manifestly wrong in the sense of being illegal or of being unsuitable to the proved facts and circumstances. (d) The trial court has given undue weight to some of the evidence. (e) The trial court, in fixing the sentence, had failed to adequately consider all the relevant factors either for or against the offender. (f) The sentence was wrong in law. (g) The unsatisfactory features of the proceedings in the lower court (h) The charge has been hanging over the accused's head for a considerable period. (i) Justice does not appear to have been done." (Civil and Criminal Appeals in Malaysia by Tan Kee Heng at pp. 191 - 192). Yet it is "a firmly established principle that an appellate court would be slow to disturb the sentence imposed by the lower courts unless the sentence is excessive to such an extent as to satisfy

this court that when it was passed there was a failure to apply the right principles then this court will intervene (*R v. Kenneth John Ball* 35 Cr App R 164). According to Hashim Yeop Sani J (as he then was) in *PP v. Loo Choon Fatt* [1976] 2 MLJ 256 at p 257G: 'It is a firmly established practice that the court will not alter a sentence merely because it might have passed a different sentence' " (see *Ana Chai Seng v. PP* [2000] 1 CLJ 213 per Haidar JCA., as he then was). And the Court of Appeal in *Ang Chai Seng* reiterated what was said by the Federal Court in *Bhandulananda Jayatilake v. PP* [1982] 1 MLJ 83, 84:

> ... this court has said it again and again that it will not normally interfere with sentences, and the probability or even the possibility, that another court would have imposed a different sentence is not sufficient, per se, to warrant this court's interference. For a discretionary judgment of this kind to be reversed by this court, it must be shown to our satisfaction that the learned judge was embarking on some unauthorized or extraneous or irrelevant exercise of discretion.

In *Bhandulananda Jayatilake*, the Federal Court per Raja Azlan Shah Ag LP (as HRH then was) imparted the following guide:

> Is the sentence harsh and manifestly excessive? We would paraphrase it in this way. As this is an appeal against the exercise by the learned judge of a discretion vested in him, is the sentence so far outside the normal discretionary limits as to enable this court to say that its imposition must have involved an error of law of some description? I have had occasion to say elsewhere, that the very concept of judicial discretion involves a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred. That is quite inevitable. Human nature being what it is, different judges applying the same principles at the same time in the same country to similar facts may sometimes reach different conclusions (see *Jamieson v. Jamieson* [[1952] AC 525]). It is for that reason that some very conscientious judges have thought it their duty to visit particular crimes with exemplary sentences; whilst others, equally conscientious, have thought it their duty to view the same crimes with leniency. Therefore sentences do vary in apparently similar circumstances with the habit of mind of the particular judge. It is for that reason also that this court has said it again and again it will not normally interfere with sentences, and the possibility or even the probability, that another court would have imposed a different sentence is not sufficient per se to warrant this court's interference.

The latter is still the guide to follow (see *Dato' Seri Anwar Ibrahim* [2002] 3 CLJ 457, where the Federal Court expressed its full agreement with Bhandulananda Jayatilake).

In the instant case, the trial court had considered the public interest, the personal factors of the accused, and the plea of guilt. In particular, the trial court had considered the seriousness of the offences, and the need to protect the public. In the considered opinion of the trial court, there was no alternative to a deterrent sentence. And in the considered opinion of this court, the trial court had not imposed any sentence that was manifestly excessive or unsuitable to the proved facts and circumstances. Unlawful possession of a firearm and or ammunition is a most serious offence. The public must be protected. Like-minded offenders must be deterred. Suffice it to say that the trial court had not applied any wrong principle in the assessment of its sentences. This appeal is therefore dismissed.